

Serial No. 10/583,967  
Reply to Office Action dated August 5, 2010

Docket No. 1006/0123PUS1

**REMARKS/ARGUMENTS**

Favorable reconsideration and allowance of the present application is respectfully requested. Claims 1-18 are pending in the above application of which claims 1, 5 and 11 are independent.

The Office Action dated August 5, 2010, has been received and carefully reviewed. In that Office Action, claims 1-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Xia in view of EP 1469258 (hereinafter, "Dautry"). It is respectfully submitted that all claims are allowable over the applied references, and reconsideration and allowance of claims 1-18 is respectfully requested in view of the following remarks.

**REQUEST FOR WITHDRAWAL OF PREMATURE FINALITY**

Section MPEP 706.07(a) provides in relevant part: "[u]nder present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor ...." The Xia reference was not used in the Office Action dated July 9, 2009. In response to that Office Action, Applicant rewrote claim 5 in independent form, but the scope of claim 5 was not changed. Claim 5 is now rejected using the Xia reference. It is respectfully submitted that rewriting a claim in independent form does not change the scope of the rewritten claim and did not necessitate this new ground of rejection. The finality of the Office Action is submitted to be premature, and the withdrawal of the finality of the Office Action is respectfully requested.

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If the finality of the Office Action is not withdrawn, it is respectfully requested that the examiner explain for the record how rewriting a claim in independent form made necessary a new ground of rejection.

POSSIBLE REJECTION UNDER 35 U.S.C. 102

The Office Action indicates that the claims are "anticipated" under 35 U.S.C. "103(a)" based on two references. The term "anticipation" is generally used in connection with rejections under 35 U.S.C. 102. Moreover, the Office Action, in discussing Xia, asserts that all limitations of claim 1 are satisfied by Xia. It therefore appears that the examiner is trying to reject at least claim 1 under 35 U.S.C. 102.

It is respectfully submitted that, if a rejection of any claims under 35 U.S.C. 102 was intended, the examiner should issue a new Office Action that identifies the claims that are rejected under this section. To advance prosecution, Applicant notes that at least two limitations of claim 1 are not satisfied by Xia, and that claim 1 is allowable over Xia for at least this reason.

Claim 1 recites, inter alia, that the "first ends of the two flap parts bear against one another." Xia shows a first flap 72 with an edge that contacts a sealing support 75 and a second flap 72 with an edge that contacts the same side of sealing support 75. The Office Action asserts that the end of Xia's flaps bear against one another because they both contact the same sealing support. It is respectfully submitted that this interpretation is contrary to the ordinary meaning of "bear against" and that nothing in the record supports the definition used by the examiner. A definition of "bear" from The Merriam-Webster Online Dictionary ([www.merriamwebster.com](http://www.merriamwebster.com)) is submitted herewith.

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The relevant definition of "bear" from this listing is "thrust or press." Xia's flaps 72 may press against the same sealing support, but they in no manner press or bear against each other as claimed. At least this limitation of claim 1 is not shown by Xia, and claim 1 is submitted to be allowable over Xia for at least this reason.

If an anticipation rejection based on Xia is raised, it is respectfully requested that the examiner explain for the record under what definition of "bear" one of ordinary skill in the art would find that Xia's flaps "bear against one another" as recited in claim 1.

The Office Action also indicates that Xia's flaps 72 "roll and/or slide on one another during a movement" because "the gasket material rolls against each other." This statement does not make sense and has no relevance to the claim language. Contact with a gasket does not show flaps rolling against each other. Claim 1 further distinguishes over Xia for this reason.

If an anticipation rejection based on Xia is raised, it is respectfully requested that the examiner explain for the record how contact with a gasket satisfies the limitation of two flaps rolling against one another as claimed.

#### REJECTIONS UNDER 35 U.S.C. 103(a)

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Xia in view of Dautry. It is respectfully submitted that the Office Action has not satisfied the requirements of MPEP 706.02(j) and has therefore not presented a prima facie case of obviousness. This MPEP section provides that, in order to support a claim rejection under 35 U.S.C. 103(a), the examiner should explain what limitation is not satisfied by a reference and explain how the reference should be modified to arrive at the claimed

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subject matter. The present Office Action indicates that Xia satisfies all limitations of claim 1. No missing limitations are identified. As such, the rejection does not present a prima facie case of obviousness, and the withdrawal of the rejection of claim 1 is respectfully requested.

The Office Action appears to be proposing that the straight edges of Xia's flaps 72 should be curved as shown in Dautry and that the operation of Xia's vent be changed so that, instead of pressing flaps 72 against a sealing support 75 as disclosed, the curved ends of the flaps should be pressed against each other. If this is the modification to Xia that is being proposed, it is respectfully requested that the examiner confirm this interpretation (or identify the modification that is intended) in a further Office Action. The reason provided for modifying Xia in this manner is "to increase the effectiveness of the seal."

It is respectfully submitted that, rather than increase the effectiveness of a seal as asserted in the Office Action, the proposed modification to Xia would cause Xia's seal to leak. With reference to Figure 2 of Xia, curved flap ends might be able to form a seal in a central portion of the straight edges of the flaps. However, the end portions of the curved edges would curve away from gasket 74 and allow air to leak around the flaps. The proposed modification to Xia replaces what appears to be an effective seal with a leaky seal, and nothing in the record suggests that one of ordinary skill in the art would have a reason to make such a modification to Xia. The modification to Xia proposed by the examiner is therefore not obvious, and claim 1 is submitted to be allowable for at least this reason.

Claims 2-4, 6-10 and 18 depend from claim 1 and are submitted to be allowable

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for at least the same reasons as claim 1.

Claim 5 recites an air flow regulating device having a housing and a flap arrangement with at least two flap parts for opening and closing an opening which are pivotable about pivot axes which run parallel to one another. End regions of the two flap parts bear against one another in the closed state of the flap arrangement and roll and/or slide on one another during a movement of at least one flap part from the closed state into a partially open state or vice versa. In addition, a stop is provided on the housing in the central region between the pivot axes on at least one side of the flap arrangement. Xia includes a stop in the form of sealing support 75. However, Xia does not show flap parts that bear against each other or flap parts that roll against each other as recited in claim 5. The modification to Xia proposed in the Office Action would make Xia's vent leak, and no reason has been provided for changing a vent that seals into a vent that leaks. Claim 5 is submitted to be allowable for at least these reasons.

Claim 11 recites an air flow regulating device that includes a housing having an opening and first and second flap parts for opening and closing the opening, where the first and second flap parts each have a first end, a second end, a midpoint halfway between the first end and the second end and a pivot axis between the midpoint and the first end. The first and second flap parts are shiftable from a first configuration in which the first end of the first flap engages the first end of the second flap and the first and second flap parts cover the opening to a second configuration in which the first flap part at least partially uncovers the opening. Also, the first ends of the first and second flap parts engage one another as the first flap part moves from the first configuration to the second configuration.

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Xia does not show a first flap that "engages" a second flap as recited in claim 11. The Office Action indicates that flaps 72 of Xia "engage" each other through element 75. It is respectfully submitted that two flaps that do not contact each other do not "engage" each other as recited in claim 11. If the rejection of claim 11 is maintained, it is respectfully requested that the examiner explain what definition of "engage" is being used to show that two flaps "engage" each other merely because they rest against the same support. The first ends of Xia's flaps also do not "engage" each other as the first flap moves. Modifying Xia to include flaps with curved ends as shown in Dautry would make Xia's vent leak as discussed above in claim 1. A reason for making Xia's valve leak has not been provided, a prima facie case of obviousness has not been presented, and claim 11 is submitted to be allowable over Xia and Dautry for at least this reason.

Claims 12-17 depend from claim 11 and are submitted to be allowable for at least the same reasons as claim 11.

### **CONCLUSION**

Each issue raised in the Office Action dated August 5, 2010, has been addressed, and it is believed that claims 1-18 are in condition for allowance. Wherefore, reconsideration and allowance of these claims is earnestly solicited. If the examiner believes that any additional changes would place the application in better condition for allowance, the examiner is invited to contact the undersigned attorney at the telephone number listed below.

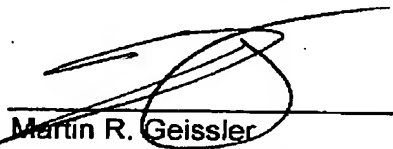
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*Deposit Account Authorization*

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,

  
\_\_\_\_\_  
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**Date: September 30, 2010**



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Top 10 Commonly  
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Word Games Word of the Day New Words & Slang Video

bear



bear

30 ENTRIES FOUND:

- 1) bear (noun)
- 2) bear (verb)
- Bear (geographical name)

Ads by Google

Weight Loss Surgery Cost  
We Offer Minimal Invasive Bariatric Surgery & Help You Finance It Too.  
www.EndoBariatric.com

<sup>2</sup>bear verb

bore <sup>4</sup> borne also born <sup>4</sup> bearing

Definition of BEAR

transitive verb

- 1 a : to move while holding up and supporting
- b : to be equipped or furnished with
- c : BEHAVE, CONDUCT <bearing himself well>
- d : to have as a feature or characteristic <bears a likeness to her grandmother>
- e : to give as testimony <bear false witness>
- f : to have as an identification <bore the name of John>
- g : to hold in the mind or emotions <bear malice>
- h : DISSEMINATE
- I : LEAD, ESCORT
- j : RENDER, GIVE
- 2 a : to give birth to
- b : to produce as yield
- c (1) : to permit growth of (2) : CONTAIN <oil-bearing shale>
- 3 a : to support the weight of : SUSTAIN
- b : to accept or allow oneself to be subjected to especially without giving way <couldn't bear the pain> <I can't bear seeing you cry>
- c : to call for as suitable or essential <it bears watching>
- d : to hold above, on top, or aloft
- e : to admit of : ALLOW
- f : ASSUME, ACCEPT



What Is a "Kinesophobe" So  
Afraid Of?  
Top 10 Unusual Phobias, Vol. 2



"Acrimonious"  
When Guns 'N Roses guitarist Slash filed  
for divorce ... more »



"Sepulchral"  
In a blog post about layoffs at CBS News  
... more »

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4



**: THRUST, PRESS**

*Intransitive verb*

- 1** : to produce fruit : YIELD
- 2 a** : to force one's way
  - b** : to extend in a direction indicated or implied
  - c** : to be situated : LIE
  - d** : to become directed
  - e** : to go or incline in an indicated direction
- 3** : to support a weight or strain —often used with *up*
- 4 a** : to exert influence or force
  - b** : APPLY, PERTAIN —often used with *on* or *upon* <facts bearing on the question>
- **bear a hand**
  - : to join in and help out
- **bear arms**
  - 1** : to carry or possess arms
  - 2** : to serve as a soldier
- **bear fruit**
  - : to come to satisfying fruition, production, or development
- **bear in mind**
  - : to think of especially as a warning : REMEMBER
- **bear with**
  - : to be indulgent, patient, or forbearing with

**Examples of BEAR**

a symphony that can *bear* comparison with Beethoven's best

The company agreed to *bear* the costs.

The criminals must *bear* full responsibility for the deaths of these innocent people.

Who will *bear* the blame for this tragedy?

**Origin of BEAR**

Middle English *beren* to carry, bring forth, from Old English *beran*; akin to Old High German *beran* to carry, Latin *ferre*, Greek *pherein*

First Known Use: before 12th century

**Related to BEAR**

**Synonyms:** birth [*chiefly dialect*], deliver, drop, have, mother, produce, give birth to, live with, lump (it), stand for, tough (it) out

**Antonyms:** disavow, disclaim, disown, repudiate

[+] more

**Synonym Discussion of BEAR**

BEAR, SUFFER, ENDURE, ABIDE, TOLERATE, STAND mean to put up with something trying or painful. BEAR usually implies the power to sustain without flinching or breaking <forced to *bear* a tragic loss>. SUFFER often suggests acceptance or passivity rather than courage or patience in bearing <*suffering* many insults>. ENDURE implies continuing firm or resolute through trials and difficulties <*endured* years of